

From the arguments, it appears that the Examiner wishes Applicants to choose a single species of polycondensate and a single species of film forming polymer. Accordingly, as the at least one polycondensate (A) Applicants elect to prosecute the species set forth in Example 1, namely, lactic acid/ethylene glycol P (MIS - EG) - dimethylolpropanoic acid (DMPA) - isophorone diisocyanate polyester polycondensate. As the film forming polymer, Applicants elect to prosecute the species set forth in Example 1, namely, polydimethyl/methylsiloxane containing propylthio-3-methylacrylate groups/methacrylate/methacrylic acid (VS80). Claims 27-35, 39-41, and 43-48, 58, and 60-71 read on the elected species. This election is made with traverse.

Applicants traverse on the grounds that the examiner has failed to properly show that claims 27-71 lack unity of invention, as required by PCT Rules 13.1 and 13.2. Unity of invention has to be considered in the first place *only in relation to the independent claims* and not the dependant claims. See M.P.E.P. § 1850 (A). If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. *Id.* In particular, there is unity of invention in the case of a genus/species situation where the genus claim avoids the prior art. *Id.* Only if an independent genus claim does not avoid the prior art may an objection based on lack of unity between a genus and a species be raised, and then only if no inventive link remains between the genus and the species. *Id.* In order to make such a determination, the Examiner must first assess the prior art and then determine if a link exists between the genus and the species. *Id.*

In the present case, the Examiner has not shown that any of the independent genus claims do not avoid the prior art. Without such as showing, the Examiner cannot

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show that an inventive link does not exist between the genus and species, and therefore cannot show that there is lack of unity of invention.

Furthermore, the Examiner's arguments in support of the election of species requirement are based entirely on limitations from the dependant claims. As pointed out above, unity of invention has to be considered in the first place only in relation to the independent claims and not the dependent claims.

For these reasons, Applicants respectfully request that the election of species requirement be withdrawn. Moreover, if the Examiner does maintain the election of species requirement, Applicants request that the Examiner broaden the search to include the non-elected species, once the elected species is found to be allowable.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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